



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Informed Consent Action Network,

Plaintiff,

-against-

United States Food and Drug
Administration,

Defendant.

1:20-cv-00689 (SDA) (AJN)

ORDER

STEWART D. AARON, United States Magistrate Judge:

Before the Court is Defendant's Letter Motion seeking a Court Order "quashing [Plaintiff's] unauthorized discovery requests."¹ (Letter Motion, ECF No. 21.) Following a telephone conference with the parties, and for the reasons set forth below and as stated on the record, it is hereby Ordered that Defendant's motion is GRANTED.

Discovery in a FOIA action is "rare." *Judicial Watch v. U.S. Dep't of State*, No. 13- CV-01363 (EGS), 2016 WL 10770466, at * 3 (D.D.C. Aug. 19, 2016). "[D]iscovery may be granted when plaintiff has made a sufficient showing that the agency acted in bad faith . . ., has raised a sufficient question as to the agency's good faith . . ., or when a factual dispute exists and the plaintiff has called the affidavits submitted by the government into question." *Id.* (citations omitted).

Defendant argues that a requester cannot serve discovery demands until there has been a holding by the Court that Plaintiff has shown agency bad faith or that the agency has not met

¹ The Court construes Defendant's motion as a motion, pursuant to Federal Rule of Civil Procedure 26(c)(1)(A), to forbid Plaintiff from taking discovery.

its burden under FOIA and, here, the Court has made no such findings, nor has Plaintiff established any basis for such a finding. (Letter Motion at 1-2.) Plaintiff responds that its discovery requests are appropriate based on District Judge Nathan's June 3, 2020 endorsement that Plaintiff "may seek discovery" following Defendant's submission of its motion for summary judgment and that discovery is warranted because Defendant has shown bad faith. (Letter Response, ECF No. 22, at 1-2 (quoting 6/3/20 Memo Endorsement, ECF No. 13).)

While Judge Nathan permitted Plaintiff to "seek discovery[,]" this Court does not interpret her endorsement as a determination that discovery is in fact warranted. On the record before this Court, I find, in my discretion, that Plaintiff has not made a sufficient showing to warrant discovery at this time.

SO ORDERED.

DATED: New York, New York
September 24, 2020

A handwritten signature in black ink, appearing to read "Stewart D. Aaron", is written over a horizontal line.

STEWART D. AARON
United States Magistrate Judge